IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

LA.App..No. 1009 of 2004(B)

LAR.1/1992 of SUB COURT, PAYYANNUR
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APPELLANT: SUPPL.2ND RESPONDENT:

DEPARTMENT OF POSTS,
REPRESENTED BY THE SUPERINTENDENT OF POSTS,
CANNANORE DIVISION, CANNANOORE-670 001.

BY ADV. SRI.JOHN VARGHESE, ASSISTANT SG

RESPONDENTS: PETITIONER & 1ST RESPONDENT:
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1. THALAYILLATH KADEEJA,
D/O. ABDULKADER HAJI, NORTH TRIKARIPUR,
HOSDURG TALUK.

2. STATE OF KERALA,
REPRESENTED BY THE DISTRICT COLLECTOR, KANNUR.

BY ADV. SMT.VIDHYA. A.C
GOVERNMENT PLEADER
SRI.C.P.KUNJHIKANNAN
SRI.P.PARAMESWARAN NAIR

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 04/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kurian Joseph & T.R. Ramachandran Nair, JJ.

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L.A.A..NO.1009 of 2004

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Dated this the 4th day of July, 2007

JUDGMENT

T.R. Ramachandran Nair, J.

This appeal is filed by the supplemental second respondent in L.A.R. No.1/1992 on the file of the Sub Court, Kozhikode. The acquisition is for the purpose of construction of a Post Office at the instance of the appellant. The property acquired is having an extent of 0.0804 hectares of land in R.S.No.18/7 of Payyannur Village. The notification under Section 4(1) was published on 13.7.1989 and the award was passed on 30.10.1991. Seeking enhancement of the market value, the claimant sought for a reference under Section 18 of the Act. The total compensation awarded by the Land Acquisition Officer is Rs.84,899/-. The land value claimed by the claimant is at the rate of Rs.50,000/- per cent.

2. The Land Acquisition court had enhanced the compensation as per judgment dated 30.11.1994 against which L.A.A. No.692/1995 was filed by the claimant and L.A.A. No.251/1996 was filed by the State. They were disposed of by a common judgment dated 26.11.2002 holding that the requisitioning authority was not a party and therefore the matter required a

remand to the lower court for fresh disposal.

3. After remand, the appellant has filed a detailed counter statement justifying the award passed by the Land Acquisition Officer. The claimant examined Aws.1 and 2 and Exts.A1 and A2 have been marked on their side. RW.1 was examined on the side of the appellant and Exts.R1 to R4 have been marked. An Advocate Commissioner was appointed at the instance of the claimant and the report is marked as Ext.X1. The court below after elaborately considering the evidence, has fixed the land value at Rs.27,000/- per cent. Aggrieved by the same, this appeal is filed.

4. The court below found that the basic land is not having the same importance as that of the land acquired for want of commercial establishments, shops and other institutions near it. It is a document executed by a patient to one Doctor. The report of the Commissioner shows that the acquired property is situated about 250 metres west of Payyannur Municipal Bus stand and is within Payyannur Municipality. The Payyannur Town main road is on the south of the acquired property. There are various institutions which are situated within a short distance of the acquired property. They include Block Development Office, Kendriya Hindi Maha Vidyalaya, Land Tribunal, Payyannur, Payyannur Post Office, B.K.N. Hospital, Payyannur, Deepthi Nursing Home, Payyannur,

Payyannur Khadi Centre and St. Mary's High School. The branch of the Kannur District Co-operative Bank as well as the Office of the Payyannur Co-operative Rural Bank and the branch of the Federal Bank are situated within half km. of the acquired property. Apart from that, in the immediate adjacent plot on the western side of the acquired land, a commercial building having 11 shop rooms which was duly constructed, was situated. On the east of the same acquired property there is a double storied building which is occupied by the Kerala Governemnt Women's residential poly technic. It is also pointed out that further towards east on the same line of the main road there are Sai Ram Industries, B.P.L. Shown room and other trading units. Thus, it is evident that it s a very important locality and is having commercial importance also.

5. The report of the Commissioner shows that the basic land is situated about 1 ½ kms. south of the acquired land. There is only a narrow tarred road running south-north touching this land which further joints with the Payyannur Town main road at about 300 metres north of the said property. There are no shopping complexes and the area is having less trading activities and less traffic than the acquired land which is within the Payyannur Town. Through the narrow road near the basic land, no buses are plying also.

6. AW.2 is the Secretary of the Town Co-operative Bank who was examined to prove the transaction covered by Ext.A1. The property was purchased by the Town Co-operative Bank Ltd., Kannur and therefore the court below rightly concluded that the transaction is one which has taken place in the ordinary course of business. In Ext.A1, 4 cents of property has been sold for an amount of Rs.1,44,000/-. Therefore, the value per cent will be Rs.36,000/-. The Commissioner noted that the property is situated near to the Payyannur Town and on the east of this plot there is a main road proceeding to Kannur. There are the Registrar's Office, Payyannur Police Station, Circle Inspector's Office, Payyannur Munsiff's Court, Government Hospital and Government Treasury which are situated within 300 metres from this plot. The area is covered with shopping complexes. Through the main road vehicles including buses were plying also. The document Ext.A1 was executed on 22.5.1986, three years prior to the Section 4(1) notification. The court below noted that the acquired property is lying one foot below road level and the property covered by Ext.A1 is on the same level of the road. But since there was a difference of 3 years between the execution of the said document and the acquisition in this case, no further deduction was made on that account. But as Ext.A1 transaction is in relation to 4 cents of property and as the acquired land is 20 cents in extent,

the court below deducted 1/4th of the value for fixing the market value of the acquired property. We see no infirmity in the reasoning and findings of the court below.

7. The value has been fixed considering the importance of the locality, being within the town limits itself as well as due to the commercial importance. Ext.A1 relates to similar land and the transaction reflected correct sale consideration also. Hence, we find that the court below has fixed the just compensation and the appeal deserves no merit. The same is accordingly dismissed.

(Kurian Joseph, Judge.)

(T.R. Ramachandran Nair, Judge.)

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